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No. 80-1895

In the Supreme Court of the United States

OCTOBER TERM, 1980

EXXON CORPORATION, PETITIONER

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FURTHER SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL TRADE COMMISSION

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Exxon, in its most recent submission, has misstated a fact upon which it heavily relies. In arguing that the Commission's position in this case "is inconsistent with the positions it is simultaneously advocating in pending enforcement proceedings brought under the Franchise Rule" (Supp. Mem. 5), Exxon cites *FTC* v. *Marketing Associates, Inc.*, No. 81-1173 (D. Colo. July 7, 1981), and represents that "[i]n that case" the Commission "stated that once the sixty-day review period has run, in an enforcement action a party 'may no longer obtain judicial review of the Rule' " (*ibid.*).

In fact, the Commission made no such statement in that case or in any other enforcement action. Contrary to Exxon's citation, the quoted words appear, not in any document filed in *Marketing Associates,* but in the Commission's reply memorandum filed December 24, 1980, in *Mono-Therm, Industries, Inc.* v. *FTC,* No. 80-2113 (10th Cir. July 14, 1981), a statutory pre-enforcement review proceeding brought under Section 18(e) of the Federal Trade Commission Act, 15 U.S.C. 57a(e). In *Mono-Therm,* the Commission argued, and the Tenth Circuit held, that an attempt to obtain such pre-enforcement review in the court of appeals pursuant to Section 18 was untimely where the petition was filed outside the 60-day period provided by Section 18. The availability of review in an enforcement proceeding was not discussed in *Mono-Therm,* and the quoted language, read in context, clearly refers to pre-enforcement review.

For these reasons and those we have previously stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1981

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